IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.233 OF 2005
IN
WRIT PETITION NO.502 OF 1999

Bandra HIG Phase III Co-op. Housing Societies Union Ltd. & Another .. Petitioners.
V/s.
Bombay Housing and Area Development Board & Ors. .. Respondents.

Mr.V.P. Sawant for the petitioners.

Mr.R.M. Savant, Government Pleader for respondent Nos.1 to 5.

Mr.V.R. Dhond i/b. A. Mehta Laljee & Co. for respondent NOs.6,7 and 8.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 5TH AUGUST, 2005.

P.C. :

Heard.

2. In the notice of motion, following prayer is made:

> "(a) that this Honourable Court be pleased to restrain the Respondent Nos.1 to 3 from demolishing the compound wall between the CTS No.791 A and CTS No.973 at Bandra Reclamation, Bandra, around the property of the Petitioner's Union of Societies;"

3. In the writ petition, the petitioners have prayed for the following reliefs :

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ. Order or direction in the nature of Writ under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the construction of the buildings being Building Nos.24 to 30. Bandra Reclamation Scheme, Bandra (West), Mumbai 400 050 on the file of Respondents and quash and set aside the order dated 28.12.98 on the file of Third Respondent addressed to the Petitioner Society calling for its members to pay the purported revised sale price and the communication dated 15/01/99 sent by the Third Respondent to Sagar Sangam Co-op. Society as illegal and null and void.

(b) that this Hon'ble Court be pleased to issue a Writ of certiorari or writ in the nature of certiorari or any other appropriate Writ, Order or direction in the nature of writ under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the construction of the buildings being Building Nos.24 to 30, Bandra Reclamation Scheme, Bandra (W), Mumbai 400 050, on the file of the Respondents and quash and set aside the demand notices issued on 28/30th December 1998 by the Third Respondents under Sec.67 of the MH&AD Act 1976 to all the members of the petitioner society in respect of their respective flats.

(c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of the mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India directing the Respondents to forthwith execute the Conveyance in favour of the petitioner Society or individual Societies in respect of Buildings No.24 to 30, Bandra Reclamation Scheme, Bandra (W), Mumbai 400 050 without any pre-conditions or on the terms which this Hon'ble Court may deem fit and proper, and to refund the money paid by the Petitioners members in excess to the Respondents towards the sale price of their respective flats.

(c-1) that this Honourable Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of

> certiorari calling for records and proceedings pertaining to the orders dated 25.4.2000 bearing No. and the Addendum dated 2.5.2000 and after going through the legality and propriety of the same this Honourable Court be pleased to quash and set aside the said orders;"

4. Having considered the submissions of the learned counsel for the petitioners, we are of the view that the prayer made in the notice of motion is not related and has no connection with the prayers made in the writ petition. The controversy raised by the petitioners by means of this notice of motion is beyond the scope of the issues raised in the writ petition and the reliefs prayed therein.

5. We are thus satisfied that in the present notice of motion, no relief can be granted to the petitioners. This will not preclude the petitioners from pursuing independent remedy for redressal of their grievance raised by means of this notice of motion.

6. With the aforesaid observations, the notice of motion is rejected.

7. For a period of four weeks from today, the ad-interim order passed by this Court on April 27, 2005 shall remain operative.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)